

### REMARKS

Claims 1 to 15 and 20 remain in the case.

Reconsideration of the Examiner's rejection of the claims under 35 USC 103 is respectfully requested in view of the following discussion.

Claim 1, as has previously been pointed out, provides a method for controlling soilborne pathogens which comprises the step of adding a nitrogen containing material and a pH reducing agent to the soil so that the pH is reduced below 5.5, the nitrogen containing material being present in amount sufficient to generate nitrous acid to control the soilborne pathogens.

Claim 1 stands rejected as allegedly claiming obvious subject matter, the Examiner having cited the combination of Muncie et al in view of Cooley. Muncie is cited as showing it is known to use a low pH to control potato scab. However, the Examiner appears to ignore his own previously cited and applied reference of Davis, which carries a later date which shows that pH does not have any effect on potato scab. It is well established in Patent Law that all the prior art must be considered and not merely based on a single reference. In the instant case, the references of Davis, which carries a date of February 1974, clearly rebuts the Muncie reference which is dated November 1944.

The Examiner has cited in US Patent 6,300,282 to Cooley as allegedly supporting the addition of an ammonium nitrogen source to the soil. It is to be noted that the Cooley reference carries a publication date of October 9 2001; the present application has an effective date of July 24, 2000 and accordingly, Cooley is not believed to be a valid reference. Still further there is no teaching by Cooley or other prior art references of the

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combination set forth in the method of the present invention.

In view of the above, withdrawal of the rejection and allowance of the instant application is respectfully requested.

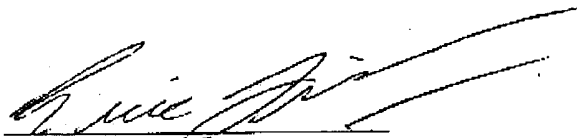
Respectfully,



Eric Fincham, Reg. 28,201

#### CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the Patents and Trademarks Office Fax No. (703) 872-9306 on the date set forth below.

  
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April 12, 2004  
Date